APPENDIX 1.

New Jersey Constitution, Article 1.

Section 7. "The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men."

Section 8. "In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed by the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of Counsel in his defence."

New Jersey Revised Statutes:

Section 2:92-7. "Upon the trial of any indictment where twenty or more peremptory challenges are not allowed, the defendant or defendants and the attorney general or the prosecutor of the pleas shall each be allowed peremptorily to challenge ten of the general panel of jurors summoned and returned by the sheriff or other officer."

APPENDIX 2.

(Reprint of Point Four as contained in the brief of John R. Longo, applicant-appellant, filed with the New Jersey Court of Errors and Appeals in support of his appeal, No. 52, October Term, 1939.)

POINT FOUR.

The making of false statements by jurors on the *voir dire* is ground for, and requires, a new trial. The Court erred in denying defendant's application.

It is of the very essence of the requirements of a juror, that he be honest and truthful. Wherever the question has been raised, it has been held that when a juror swears falsely in his examination as to his qualifications for jury service, that is ground for the allowance of a new trial.

> "The incompetency of a juror is ground for a new trial when discovered after verdict, where he denied the ground of his incompeter y on his *voir dire.*" 16 C. J. 1159, tit. "Crim. Law". Section 2665, and cases therein cited in note 5.
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> "Where the falsity of a juror's testimony on his primary examination as to material matters is shown by competent evidence, a new trial should be granted at the motion of the losing party." 46 C. J. 94, tit. "New Trial", Section 51, and cases cited.
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> "It is the general rule that if a juror deceives or misleads a party by falsely testifying when being examined as to his competency, and as a result the juror, though in fact disqualified is accepted, such conduct, when discovered after verdict, will be ground for a new trial and apparently no distinction

will be made between merely statutory disqualifications and those which affect the impartiality of the juror. Some courts indeed have declared that the constitutional right to an impartial jury would be infringed if a new trial were not granted where a juror testifies falsely as to his impartiality." 20 R. C. L. 242-3, tit. "New Trial", Section 27.

Spielter v. *No. German Lloyd,* 259 N. Y. S. 356, 232 App. Div. 104. (Concealment by juror of fact that his occupation was adjusting claims of the nature of the claim being tried.)

Romesbera v. *Merrill,* 99 Pa. Super. Ct. 197 (Intentional misleading by juror as to the fact of relationship.)

Williams v. *Bridges,* 35 P. (2) 407. (False denial by juror as to knowledge of the case.)

Rhodes v. *El Paso & S. W. Ry. Co.,* 248 S. W. 1064 (False denial of bias or prejudice warrants a new trial, even though it is not shown that the bias caused an unjust verdict.)

See, 50 L. R. A. (N. S.) 958-965, citing many dozens of authorities on this point.

The very phrase itself carried with it as an essential element the requirement of truth on the part of the juror.

"*Voir Dire L. Fr.* To speak the truth — This phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, where his competency, interest, etc. is objected to." *Black, Law Dict.* 3rd Ed. p. 1822.

"*Voir Dire.* To speak the truth. The phrase refers to an oath administered to a proposed witness or juror, and also to the examination itself, to ascertain whether he possesses the required qualifications, he being sworn to make true answers to the

questions about to be asked him concerning the matter." 67 C. J. 270.

In

Pearcey v. *Michigan Mutual Life Ins. Co.*, 111 Ind. 59, 12 N. E. 98,

it was held that where a juror had falsely answered questions as to his taking out a policy with the insurance company involved, that was ground for a new trial, as being *misconduct of the jury impairing the right to challenge.*

The fundamental inequity of allowing a perjurer to influence or participate in judicial proceedings and deliberations goes to the very foundation of the requirement that jurors, being examined as to their qualifications, be truthful. The consideration of that principle is the basis of all the rulings above cited, just as it is the basis of the statutory provision that one convicted of perjury shall thereafter be incompetent as a witness.

See:

R. S. 19:34-26;
C. S. 1748, Section 18, rewritten as R. S. 2:157-1.

It goes to the very essence of the right to a fair trial by an impartial jury, as guaranteed by state and federal constitutions,

N. J. Const. Art. 1, Section 7-8;
U. S. Const. Amendments 5 and 6,

the rights guaranteed by *Article 1, Section 1* of the New Jersey Constitution, and the rights to due process of law and the equal protection of the laws guaranteed by the 14th Amendment to the United States Constitution.